

Law Offices

**HOLLAND & KNIGHT LLP**

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2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, D.C. 20006-8801

202-955-3000  
FAX 202-955-5564  
www.hklaw.com

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January 7, 2003

03-18  
**CHARLES R. NAFTALIN**  
202-457-7040  
cnaftalin@hklaw.com

**Public Version**

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**JAN 15 2003**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: **Alascom, Inc.'s Petition for Waiver of Annual Tariff F.C.C. No. 11 and  
Request for Confidential Treatment of Information Submitted in  
Support of Petition**

Dear Ms. Dortch:

Enclosed for **filing** are **an** original and one copy of the proprietary and confidential version of Alascom, Inc.'s Petition for Waiver Regarding its **annual Tariff F.C.C. No. 11**, and four **(4)** copies of the public (redacted) version of the **filing**.

In support of the Petition for Waiver, Alascom **is** filing a "Declaration" prepared by FTI Consulting regarding the cost models used by Alascom. While the Petition itself contains **no** proprietary or confidential information, the Declaration contains a detailed **breakdown** of the demand for Alascom's network which is proprietary and confidential. Therefore Alascom requests that **the** Declaration be treated as confidential and withheld **from** public inspection in accordance with Section 0.457(d) (trade secrets) of the Commission's Rules.

Pursuant to Section 0.459(b) of the Commission's Rules, Alascom provides the following information in support of its request for confidential treatment:

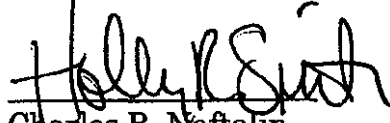
- (1) Alascom requests confidential treatment of portions of the Declaration marked as "Proprietary and Confidential;"
- (2) ~~This Declaration is being submitted in support of Alascom's request for a waiver regarding annual Tariff F.C.C. No. 11;~~
- (3) ~~This~~ Declaration contains highly confidential and proprietary information about Alascom's network usage, in particular, the chart on page 8 of the Declaration provides a detailed **summary** of network demand in minutes;
- (4) The market for telephone service is highly competitive, and Alascom faces competition both ~~from~~ other wireline telephone companies, wireless providers, and other services;
- (5) Disclosure of ~~this~~ information to competitors would cause Alascom substantial competitive harm, in that ~~it~~ would allow competitors to assess Alascom's potential vulnerabilities or other market factors;
- (6) Alascom ~~has~~ marked the Declaration as "Proprietary and Confidential" and has redacted proprietary data ~~from~~ the public version. Alascom strictly controls access to this data;
- (7) The proprietary data in ~~the~~ Declaration has not been disclosed to the public, ~~nor~~ disclosed to third-parties (not including counsel or consultants bound by confidentiality agreements or otherwise);
- (8) Alascom requests that ~~this~~ information be withheld from public disclosure ~~until~~ such time as it is ~~no~~ longer potentially harmful to ~~disclose~~ this information to the public;
- (9) Confidential treatment of this Declaration will allow Alascom to **fully** present ~~the~~ detailed network usage data in support of its Petition.

**January 7, 2003**

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**If there are any questions regarding the submission and the request for confidentiality, please contact the undersigned.**

**Sincerely,**

A handwritten signature in black ink, appearing to read "Holly R. Smith". The signature is written in a cursive, flowing style.

**Charles R. Naftalin**

**Holly R. Smith**

**Holland & Knight LLP**

***Counsel for Alascom, Inc.***

**cc: Judith A. Nitsche  
R.L. Smith  
Doug Slotten**

**WAS1 #1149173 v1**

**January 7, 2003**

**January 7, 2003**

### Summary

Alascom, Inc., a wholly owned subsidiary of AT&T Corp. (“Alascom”), by its counsel, hereby respectfully requests a waiver of Section 61.58(e)(3) of the Commission's rules, and the Commission's decisions and policies underlying that rule, requiring an annual rate revision for its Common Carrier Services (“CCS”) tariff (Alascom Tariff F.C.C No. 11) on at least 35 days' notice.

After careful review of the available data and the status of the Cost Allocation Plan (“CAP”) model used to produce Tariff No. 11 annual rate revisions, Alascom found it infeasible to make rate revisions for 2003 because of substantially changed legal and factual circumstances, an outdated model, and lack of data necessary to run the CAP model. Alascom's request for waiver relies on those facts and circumstances and is supported by the attached *Klick/Murphy Declaration*, prepared by Alascom's independent experts.

Therefore, the Commission should grant this waiver, leaving the current rates in effect while the Commission allows Alascom to prepare a rational CAP model for Commission approval or until it acts on Alascom's requests for deregulation, which have been pending since March 2000.

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**ATTACHMENT A: Declaration of John C. Klick and Julie A. Murphy**

<sup>2</sup> See **Statement of Alascom, Inc.**, CC Docket No. 95-182, filed November 27, 2002, which left the 2002 rates in effect under **Alascom** Transmittal No. 1260 to ~~Tariff~~ No. 11, filed November 27, 2001.

substantially in the approximately ten years since the CAP scheme was recommended, an outdated model, and lack of data necessary to run the CAP model, Alascom respectfully requests a waiver of the annual rate revision requirement for its Tariff No. 11 services.<sup>3</sup>

The Commission requires that Alascom maintain, and refile rates annually, under its CCS tariff, providing pricing for three rate elements in each of two geographic rate zones, Bush and non-Bush, based on the location specific costs of providing service to those zones.<sup>4</sup> The Tariff No. 11 rates are derived from the Commission approved CAP.<sup>5</sup> The Commission requires that Alascom's CAP include:

- cost separation into regulated and non-regulated, direct and indirect, and joint and common baskets pursuant to Section 64.901;
- detailed information about the separation of costs as provided for in Section 64.903;
- compliance with the affiliate transaction rules contained in Section 32.27;
- compliance throughout the process with the rules provided in Part 32 concerning the USOA; and
- compliance with the Part 36 separations rules through the application of the frozen distance sensitive allocator that allocates costs between the intrastate and interstate jurisdictions.<sup>6</sup>

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<sup>3</sup> See 47 C.F.R. § 61.58(e)(3); *See Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, 9 FCC Rcd 3023 (1994) (*Market Structure Order*) (adopting *Alaska Joint Board Final Recommended Decision*, 9 FCC Rcd 2197 (Joint Board 1993) (*Final Recommended Decision*)) (recommending annual tariff filing at ¶ 143).

<sup>4</sup> See *Market Structure Order and Final Recommended Decision* at ¶ 64.

<sup>5</sup> See *Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, 10 FCC Rcd 9823 (1995); *Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, 10 FCC Rcd 4963 (1995) (*Initial CAP Order*).

<sup>6</sup> *Initial CAP Order* at ¶¶ 11-19.



**As** explained below, and supported by the Declaration of John C. *Klick* and Julie A. Murphy ("*Klick/Murphy* Declaration"), attached hereto, the archaic CAP requirement, lack of 2002 data, and dramatic changes in the Alaska market, its laws and regulation, left Alascom unable to provide reliable 2003 Tariff No. 11 annual rate revisions. In accordance with a suggestion of the Commission's staff, Alascom hereby requests a formal waiver of that requirement in support of Alascom's Statement.

**A. History and Purpose of Tariff No. 11.**

The *Tariff* No. 11 requirements were recommended by the Alaska Joint Board in 1993, in CC Docket No. 83-1376, based upon earlier information, and adopted by the Commission in 1994 as part of a plan to create a new market structure in Alaska that would replace the Joint Service Arrangement ("**JSA**") between Alascom and AT&T.<sup>7</sup> Under the JSA, AT&T reimbursed Alascom for all of its interstate costs plus ~~an~~ interstate rate of return equal to AT&T's. After approximately ten years of proceedings, the Joint Board recommended, and the Commission ordered, the termination of the JSA. **The** Commission directed Alascom to develop its CCS (which became Tariff No. 11) to replace the JSA, in effect requiring Alascom to operate as a stand-alone carrier for the first time.<sup>8</sup> AT&T was ordered to seek Section 214 authority to serve Alaska directly for the first time and to

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<sup>7</sup> *Market Structure Order* ¶ 3, *Final Recommended Decision* ¶¶ 2-10.

<sup>8</sup> *Market Structure Order*, ¶¶ 3-7, 17, 22, 49-60; *Final Recommended Decision*, ¶¶ 103-107, 142-143.

purchase Alaska transport and **switching** services from Alascom under the CCS offerings for specified minimum dollar amounts over a required minimum period of time.<sup>9</sup> CCS was intended to be the "carriers' carrier" tariff to transition Alascom **into** independent, stand-alone operation, along with several other transition mechanisms, including lump **sum** payments from AT&T to Alascom.

In effect, CCS (now Tariff No. 11) never fulfilled its essential purpose. Instead, in 1995, AT&T purchased Alascom as its Alaska service **alternative**.<sup>10</sup> By the time Tariff No. 11 went into effect in 1996, Alascom was **a wholly owned subsidiary of AT&T** and **thus** was not a "stand-alone" carrier. Tariff No. 11 substantially has functioned as an accounting mechanism between Alascom and its parent - **an** increasingly inefficient and cumbersome mechanism.<sup>11</sup>

Since March 2000, AT&T and Alascom have been requesting authority to freeze the Tariff No. 11 rates **and** gradually phase it out in favor of more

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<sup>9</sup> Market Structure Order at ¶¶ 6; *Final Recommended Decision* at ¶¶ 7, 51.

<sup>10</sup> *Application of Alascom, Inc., AT&T Corp. and Pacific Telecom, Inc. for Transfer of Control of Alascom*, Order and Authorization, 11 FCC Rcd 732 (1995).

<sup>11</sup> There are other reasons that the CAP process was outdated. For instance, in 1997, the Bureau reviewed Alascom's revised CAP filing and acted on a Petition for Reconsideration of the Alascom Cap Approval order filed by GCI. See *Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, Memorandum Opinion and Order Approving Cost Allocation Plan, 12 FCC Rcd 1991 (1997). In doing so, the Bureau **froze in time the** classification of **Bush** and non-Bush **areas** because "the process of reclassifying locations between rate zones based only on the presence of a competitor may actually discourage competition." *Id.* at ¶¶ 25-27. **Thus, despite that competitive services are** offered to some **areas** originally classified as **Bush**, such areas remain classified as **Bush** locations, which is entirely contrary to the market structure ordered in CC Docket No. 83-1376. Alascom's Application for review of that decision has been pending for more than five years. See *Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, File No. AAD 94-119, Application for Review (filed March 12, 1997).

efficient offerings.<sup>12</sup> In large measure, the instant situation emphasizes the need for action on Alascom's *Petition*.

**B. The Alaska Market and Fundamental Regulation of It Have Changed Substantially Since the Commission Imposed Tariff No. 11.**

As noted above, the Alaska Joint Board recommended the Tariff No. 11 scheme in 1993, based upon circumstances prevailing during years prior to that decision, which the Commission adopted in 1994. Because of the realities of telecommunications competition, law and regulation have changed dramatically in the past ten years, specifically in Alaska, as well as generally.

In August 1996, the Commission approved the transfer of Alascom from Pacific Telecom, Inc. to AT&T.<sup>13</sup> At the time of the acquisition, AT&T and Alascom were both classified as "dominant" carriers, with Alascom subject to rate-of-return regulation and AT&T's residential services subject to price cap regulation.<sup>14</sup>

**1. AT&T and Alascom Are Nondominant.**

In October 1995, the Commission reclassified both AT&T and Alascom as nondominant carriers for all of their domestic interstate interexchange

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<sup>12</sup> See *AT&T Corp. and Alascom Inc. Petition for Elimination of Conditions*, CC Docket No. 00-46 (filed March 10, 2000).

<sup>13</sup> See *Application of Alascom*, *supra* n. 11.

<sup>14</sup> However, pursuant to the Commission's rate integration policy, Alascom charged the same rates for interstate domestic MTS and WATS services as AT&T, and has been doing so for many years. See *General Communication Incorporated v. Alascom, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 6479 (1987).

services<sup>15</sup> and so reclassified AT&T and Alascom as to international services in May 1996.<sup>16</sup> As a result of nondominant classification, except for Tariff No. 11, none of AT&T's or Alascom's interstate and international telecommunications services are subject to any price regulation, based on Commission determinations years ago that AT&T and Alascom lack market power.

## 2. The Rate Integration Policy Has Been Codified.

That reclassification did not change the long-standing rate integration requirement that Alascom's interstate domestic rates be the same as AT&T's. However, as part of the Telecommunications Act of 1996, Section 254(g) codifies the Commission's historic rate integration policy, requiring that Alascom must charge the same rates for interstate domestic services as those charged by its parent, AT&T, for all subscriber services subject to rate averaging requirements.<sup>17</sup> Had Alascom and AT&T been separate non-dominant entities in 1993, the **CAP** requirements, if imposed at all, would have been far different.

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<sup>15</sup> The only relevant exception to this reclassification was for Alascom's provision of Common Carrier Services to the Alaska Bush.

<sup>16</sup> *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 at n. 329 (1995) ("AT&T Reclassification Order"); *Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration* in CC Docket No. 96-61, 12 FCC Rcd 20787 (1997) ("Reclassification Reconsideration Order"), and *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, Order, 11 FCC Rcd 17963 (1996). The Commission has expressly concluded that AT&T/Alascom is within the scope of the classification of AT&T as non-dominant in the provision of interstate domestic interexchange services. *Reclassification Reconsideration Order* at ¶ 32.

<sup>17</sup> *Policy and Rules Concerning the Interstate Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 9564 at ¶¶ 9-12 (1996).

### 3. Competition in Alaska Has Grown Dramatically.

As demonstrated in the *Petition*, AT&T and Alascom establish that:

- AT&T is the only substantial "customer" of Alascom's CCS service. Under the CCS Tariff, AT&T provides 99% of all non-Bush traffic, and 84% of all Bush traffic, representing 97% of total CCS traffic. *See Petition* at p. 21.
- By 1999, at least two interexchange carriers had facilities-based access to more than 90% of all Alaskan access lines. *See Petition* at p. 5.
- By 1998, General Communication, Inc. ("GCI") had a market share in interstate traffic of 45.5 percent (647,134,000 minutes as reported in GCI's 1998 10-k) and Alascom had a market share of 54.5 percent (776,469,000 minutes as reported in the 1999 CCS D&J). In 1993, GCI held approximately 33 percent marketshare. *See Petition* at pp. 6-7
- GCI obtained a waiver of the Bush Policy and is serving more than 50 Bush locations, representing a substantial majority of originating and terminating Bush traffic. *See Petition* at p. 21.
- GCI, strongly positioned in the Internet and cable television markets, has bundled interexchange services, offering "free" residential and business Internet access to customers taking certain of its long distance plans. *See Petition* at pp 7-8.
- Other carriers, such as Matanuska Telephone Association, Alaska Network Systems and Anchorage Telephone Utility have entered the interexchange market. These carriers have established customer bases, enabling them to be significant interexchange competitors in Alaska. *See Petition* at p. 8.
- Alascom's ownership of undersea fiber-optic cables connecting Alaska to the lower 48 states has declined from almost 90% to less than 10%. *See Petition* at p. 9.

Despite the fundamental changes since **1993**, the AT&T and Alascom *Petition* for regulatory relief from the antiquated Tariff No. 11 requirements has not been acted on for more than two and a half years.<sup>18</sup>

#### **4. There Should Be No Remaining Policy Basis to Support Continuation of Tariff No. 11.**

In the *Petition*, AT&T and Alascom specifically requested that the Commission repeal the "Bush Policy."<sup>19</sup> Adopted in the 1970s, the Bush Policy provides Alascom a *de jure* monopoly for the provision of public-switched telecommunications services via satellite earth stations to the "Alaska **Bush**," remote communities of fewer than **one** thousand persons. The Bush Policy is the only basis for disparate regulation of service to the Bush. The state of Alaska repealed its version of the Bush Policy in **2000**.<sup>20</sup> The Commission should have followed suit, repealing the Bush Policy, and regulating Alascom facilities **no** differently than in the rest of the nation.

Rather than acting on the *Petition*, the Commission issued a New Notice of Proposed Rule Making<sup>21</sup> proposing the elimination of the Bush Policy. All parties commenting continue to agree that the Bush Policy has

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<sup>18</sup> Specifically, AT&T and Alascom requested the authority to cap Tariff No. 11 rates at their current levels. See *Petition* at pp. 23-24. No further rate adjustments would be required. They also proposed to enter into a two-year monitoring period during which the Commission and interested parties would be able to monitor the Bush service while AT&T and Alascom would offer services more efficient than CCS, and thereafter terminate the tariff. *Id*

<sup>19</sup> See *Petition* at pp. 3, 21.

<sup>20</sup> *Consideration of the Reform of Intrastate Interexchange Telecommunications Market Structure and Regulations in Alaska*, Docket R-98-1, Order No. 6 (RCA, Nov. 20, 2000).

<sup>21</sup> See *Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska*, IB Docket No. 02-30 and RM No. 7246, Notice of Proposed Rulemaking (FCC 02-37, rel. February 15, 2002) ("NPRM").

outlived any usefulness and should be repealed immediately.<sup>22</sup> The Commission's proposed elimination of the Bush Policy, consistent with the action requested ~~in~~ the Petition, is ~~further~~ evidence that the basis for Tariff No. 11 is outmoded by substantially changed legal and factual circumstances.

## **II. *Alascom's Request Squarely Meets the Commission's Waiver Standards.***

The Commission's rules may be waived for good cause shown.<sup>23</sup> The Commission has discretion to waive a rule when the particular facts ~~make~~ strict compliance inconsistent with the public interest.<sup>24</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>25</sup>

Alascom submits that based upon the *Klick/Murphy* Declaration, the record established by the uncontroverted basis for repeal of the Bush Policy, and taking into consideration hardship, equity and more effective implementation of overall policy, the Commission should determine that it is in the public interest to grant Alascom's request for waiver of its annual Tariff No. 11 rate revision requirements.

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<sup>22</sup> See Comments of the Regulatory Commission of Alaska *in* IB Docket No. 02-30 at pp. 5-6; Comments of General Communication, Inc. ("GCI") *in* IB Docket No. 02-30 at p. 15; Comments of AT&T and Alascom, Inc. *in* IB Docket No. 02-30 at p. 5.

<sup>23</sup> See 41 C.F.R. § 1.3; see also *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules, WCB/Pricing 02-26*, Memorandum Opinion and Order at ¶ 4 (DA 02-3553, rel. Dec. 20, 2002).

<sup>24</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1155 (D.C. Cir. 1990).

<sup>25</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972).

### III. The *Klick/Murphy Declaration* Demonstrates 'hat this Waiver Should Be Granted.

Alascom's request for waiver relies in part on particular facts and circumstances surrounding the preparation of the 2002 annual rate revision to its Tariff No. 11 rates, a process which ultimately led to the conclusion that Alascom should retain outside cost modeling experts to advise on a solution to problems encountered with the CAP model and annual rate filing. The result of such inquiry is the *Klick/Murphy Declaration*.

After extensive review of the CAP model and surrounding regulatory and market circumstances to assist Alascom in evaluating the suitability of the CAP model for establishing rates for 2003 and beyond, the cost modeling experts concluded the following. First, several years' experience suggests that the CAP model may not continue to function as anticipated. For instance, the ability to directly assign/attribute investment and expenses has steadily declined from the 93% initially assignable/attributable in 1994.<sup>26</sup>

Second, the current CAP model is unduly resource intensive. For example, the current CAP process requires weekly polling of AT&T switches in Alaska and transmittal of as many as 2 million individual call records a month to cost analysts in New Jersey, consolidation of call records into CLOC-by-CLOC summaries of traffic, and significant efforts to check data integrity before the process may be run.<sup>27</sup>

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<sup>26</sup> See *Klick/Murphy Declaration* at ¶ 12.

<sup>27</sup> *Id.* at ¶ 22.



Third, there are serious problems with the input data used in the model. For example, for the 2003 run, call records for all interstate calls made from Alascom facilities are unavailable, and essentially unobtainable, for a large portion of 2002.<sup>28</sup> Additionally, certain data are hard coded into the CAP and used to allocate costs of service in determining revenue requirements.<sup>29</sup> That data are increasing stale with the passage of time and have been undermined by the Bureau's freeze of the Bush communities.<sup>30</sup> Those serious problems are described in detail by Klick and Murphy.

Substantial market place changes in the past ten years also undermine the reliability of the CAP. Such changes include explosive growth in the use of wireless telecommunications, calling cards and the Internet.<sup>31</sup>

The experts conclude that "the soundest regulatory approach would be for the FCC to permit 2002 Tariff No. 11 rates to remain in effect in 2003, giving Alascom the time required to evaluate and revamp the CAP process so that it can be applied efficiently and reliably in the future," subject to the Commission's review and approval.<sup>32</sup>

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<sup>28</sup> *Id.* at ¶¶ 27-29.

<sup>29</sup> *Id.* at ¶¶ 30-31.

<sup>30</sup> *Id.* at ¶ 23.

<sup>31</sup> *Id.* at ¶¶ 6, 17-19,

<sup>32</sup> *Id.* at ¶ 36.

**IV. Conclusion.**

For all of the reasons stated above, Alascom respectfully requests a waiver of the Commission's rules and orders requiring an annual revision to its Tariff No. 11.

Respectfully submitted,

**ALASCOM, INC.**

By 

Charles R. Naftalin

Holly R. Smith

Holland & Knight LLP

2099 Pennsylvania Avenue, NW

Suite 100

Washington, DC 20006-6801

(202)457-7040

January 7, 2003